

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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EBEN ALEXANDER, III, M.D.

Plaintiff,

v.

BRIGHAM AND WOMEN'S PHYSICIANS  
ORGANIZATION, INC., successor to  
Brigham Surgical Group Foundation, Inc.,  
BOSTON NEUROSURGICAL FOUNDATION  
INC., BRIGHAM SURGICAL GROUP  
FOUNDATION, INC. DEFERRED  
COMPENSATION PLAN, BRIGHAM  
SURGICAL GROUP FOUNDATION, INC.  
FACULTY RETIREMENT BENEFIT  
PLAN, COMMITTEE ON COMPENSATION  
OF THE BRIGHAM SURGICAL GROUP  
FOUNDATION, INC., and  
PETER BLACK, M.D.

Defendants.

Case No. 04-10738-MLW

U.S. DISTRICT COURT  
DISTRICT OF MASS.

**ASSENTED-TO MOTION TO EXTEND RULE 56 DEADLINE**

Plaintiff Eben Alexander, M.D. ("Dr. Alexander") hereby respectfully requests that this Court extend the time within which Dr. Alexander has to file his motion for summary judgment by 14 days. In support hereof, Dr. Alexander states that the parties are endeavoring to stipulate to certain facts which will assist the Court in deciding the motion for summary judgment and the additional time is required for the parties to work out a stipulation. In further support hereof, Dr. Alexander states as follows:

1. This action was filed in April 2004 and initially assigned to Judge Saris. In July 2004, this action was reassigned to this Court based on the recusal of Judge Saris. On November

29, 2004, an initial scheduling conference was held, as well as oral argument on defendants' motion to dismiss. The Court granted the motion to dismiss in part.

2. Subsequent to the November 29<sup>th</sup> hearing, the parties engaged in a series of settlement discussions and reported back to the Court on three separate occasions concerning the status of the settlement discussions. On January 14, 2005, the parties reported that they were unable to settle the case and jointly requested that the plaintiff file a motion for summary judgment on the question of whether either or both of the Brigham Surgical Group Foundation's deferred compensation plans are valid top hat plans under ERISA before engaging in any other litigation.

3. On January 30, 2005, the Court adopted the parties' request to brief the top hat issue and set the current Rule 56 deadlines for Dr. Alexander to file his motion for summary judgment by March 10, 2005 and defendants to file their opposition by April 15, 2005.

4. Both counsel for plaintiff, Michael Paris and Colleen Cook, were involved in a week-long arbitration that took place in New York beginning February 14, 2005. There were issues left open at the conclusion of the arbitration concerning supplementing the evidentiary record which have taken a considerable amount of plaintiff's counsel's time in the weeks following the arbitration.

5. Upon preparing plaintiff's motion for summary judgment in this action, it became clear to counsel for plaintiff that additional information from defendants is required to brief fully the validity of the deferred compensation plans as top hat plans under ERISA. Accordingly, plaintiff's counsel recently contacted defendants' counsel to request the additional information and to discuss stipulating to certain facts for the summary judgment briefing.

6. Defendants' counsel has agreed to cooperate with plaintiff's counsel in an effort to provide information intended to facilitate the stipulation of certain key facts and is in the process

of gathering information responsive to plaintiff's request.

7. In sum, a short extension will permit the parties to present the Court with all of the salient facts -- many in stipulated form -- and to fully brief the top hat issue, which is a critical issue in shaping the future course of this litigation.

8. This is the first extension sought by Dr. Alexander.

9. Defendants assent to this motion.

WHEREFORE, plaintiff respectfully requests that the Court extend the time for plaintiff to file his motion for summary judgment to March 24, 2005.

Dated: March 8, 2005

Respectfully submitted,

Plaintiff Eben Alexander, M.D.  
By his attorneys,



Michael Paris (BBO No. 556791)  
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ASSENTED-TO:



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Counsel for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on March 8, 2005, a true copy of the above document was served upon Gregory Keating, Esq., counsel for defendants, by facsimile and first class mail.

A handwritten signature in cursive script, appearing to read "C. Cook", is written over a horizontal line.

Colleen C. Cook